



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

June 26, 2013

**CHAN**

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Euvindsonz Dacilas**  
Tax Registry No. 914334  
Military and Extended Leave Desk  
Disciplinary Case Nos. 2010-1833, 2010-3371,  
2011-4350, 2011 6362 & 2012-7741

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on May 14, May 22, July 18, July 19, August 14, November 27, and December 3, 2012 and was charged with the following:

**DISCIPLINARY CASE NO. 2010-1833**

1. Said Police Officer Euvindsonz Dacilas (A.K.A. Euvindso Dacilas), while assigned to the Housing Bureau, Viper 4, on or about and between June 27, 2009 and July 14, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Dacilas was absent without leave from the Department, to wit: Police Officer Dacilas failed to report to work, without permission from the Department, for approximately two hundred and seventy three (273) tours, for which he received over fifty thousand dollars (\$50,000) in compensation from the Department. (As amended)

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT – PROHIBITED CONDUCT / GENERAL REGULATIONS**

2. Said Police Officer Euvindsonz Dacilas (A.K.A. Euvindso Dacilas), while assigned to the Housing Bureau, on or about August 13, 2010, failed to bring his Activity Logs that cover the years 2009 and 2010 to his Official Department Interview as directed when Police Officer Euvindso Dacilas received the notification to appear for the Official Department Interview.

**P.G. 203-05, Page 1, Paragraph 1**

**PERFORMANCE ON DUTY – GENERAL GENERAL REGULATIONS**

3. Said Police Officer Euvindsonz Dacilas (A.K.A. Euvindso Dacilas), while assigned to the Housing Bureau, Viper 4, on or about July 7, 2010, while at the Department's Bronx Health Care Unit, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Dacilas wrongfully impeded a Department investigation, to wit: when asked by Sergeant Kenneth Smith, Commanding Officer of the Bronx Health Care Unit, whether he reported to work in June, July, August, September, October, November and December of 2009, Police Officer Dacilas indicated that he did.

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT – PROHIBITED CONDUCT / GENERAL REGULATIONS**

4. Said Police Officer Euvindsonz Dacilas (A.K.A. Euvindso Dacilas), while assigned to the Housing Bureau, Viper 4, on or about August 13, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Dacilas wrongfully impeded a Department investigation, to wit: Police Officer Dacilas stated during his official Department interview, in sum and substance, that he could not recall his discussion regarding his duty status with Sergeant Kenneth Smith and Dr. Michael Murray on July 7, 2010.

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT – PROHIBITED CONDUCT / GENERAL REGULATIONS**

**DISCIPLINARY CASE NO. 2010-3371**

1. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about December 15, 2010, after having been returned to duty by a Department Surgeon failed to report back to work for his 1<sup>st</sup> Platoon tour on December 15, 2010, as ordered.

**P.G. 205-01, Page 4, Paragraph 30**

**REPORTING SICK PERSONNEL MATTERS**

2. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about December 14, 2010, failed to immediately notify a Brooklyn Court Section supervisor of his being returned to duty by a Department Surgeon, as required.

**P.G. 205-01, Page 4, Paragraph 29**

**REPORTING SICK PERSONNEL MATTERS**

**DISCIPLINARY CASE NO. 2010-3371**

**P.O. EUVINDSONZ DACILAS**

3. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about December 16, 2010, failed to comply with the lawful order of a supervising officer, to wit: failed to report to the Brooklyn Court Section at 1000 hours as directed by Sergeant Jimmie Fluker.

**P.G. 203-03, Page 1, Paragraph 2**

**COMPLIANCE WITH ORDERS  
GENERAL REGULATIONS**

**DISCIPLINARY CASE NO. 2011-4350**

1. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about March 23, 2011, failed to notify the Desk Officer/Supervisor at his assigned Command at least two hours prior to the start of his tour that he was reporting sick, to wit: Police Officer Dacilas reported sick at approximately 0836 hours for his scheduled 0837 x 1700 hours tour.

**Interim Order #27, Page 1, Dated August 2, 2010    REVISION TO PATROL  
GUIDE 205-01 "REPORTING SICK"**

2. Said Police Officer Euvindsonz Dacilas, on or about March 24, 2011, assigned to the Brooklyn Court Section, having been examined by a Department District surgeon on March 23, 2011 and found fit for duty on said date, reported sick again for the same reason on March 24, 2011, at approximately 0619 hours.

**P.G. 205-45, Page 2, Additional Data - CHRONIC ABSENCE CONTROL  
PROGRAM**

**DISCIPLINARY CASE NO. 2011-6362**

1. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about November 20, 2011, failed to notify the Desk Officer/Supervisor at his assigned Command at least two (2) hours prior to the start of his tour that he was reporting sick, to wit: Officer Dacilas reported sick at approximately 0756 hours for his scheduled 0837 x 1700 hours tour.

**P.G. 205-01 - REPORTING SICK**

**Interim Order #27 Dated 2010**

2. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about November 21, 2011, having been examined by a Department Surgeon and found fit for duty at 0900 hours on said date reported sick again for the same reason at 1244 hours at the Brooklyn Court Section.

**P.G. 205-45, Page 2, Additional Data**

**CHRONIC ABSENCE CONTROL  
PROGRAM**

3. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about November 21, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer could not account for his whereabouts from 0914 hours from the Medical Division until his return to the Brooklyn Court Section at 1200 hours.

**P.G. 203-10, Page 1, Paragraph 5**

**GENERAL REGULATIONS**

1. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about and between May 29, 2012 and June 13, 2012, at a location known to this Department, having been directed to appear at the Medical Division, failed to timely appear for said assignment on three (3) separate dates wherein said officer was late for a total of approximately seven (7) hours and one (1) minute.

**P.G. 203-03, Page 1, Paragraph 3**

**COMPLIANCE WITH ORDERS**

In a Memorandum dated May 14, 2013, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty of Specification Nos. 2 and 3, Not Guilty of Specification No. 1, and Dismissed Specification No. 4, in Disciplinary Case No. 2010-1833. The Respondent was found Guilty of Specification Nos. 1 and 3, and Specification No. 2 was Dismissed, in Disciplinary Case No. 2010-3371. The Respondent was found Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2011-4350. The Respondent was found Guilty of Specification Nos. 1 and 2 and Specification No. 3 was Dismissed, in Disciplinary Case No. 2011-6362. The Respondent was found Guilty of Specification No. 1 in Disciplinary Case No. 2012-7741. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The continued misconduct committed by Police Officer Dacilas warrants the forfeiture of all one hundred and sixty-one (161) suspension days without pay already served on pretrial suspension and he shall be placed on a one (1) year dismissal probation period, as a disciplinary penalty.



Raymond W. Kelly  
Police Commissioner



## POLICE DEPARTMENT

May 14, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Euvindsonz Dacilas  
Tax Registry No. 914334  
Military and Extended Leave Desk  
Disciplinary Case Nos. 2010-1833, 2010-3371,  
2011-4350, 2011-6362 & 2012-7741

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The above-named member of the Department appeared before me on May 14, May 22, July 18, July 19, August 14, November 27, and December 3, 2012, charged with the following:

Disciplinary Case No. 2010-1833

1. Police Officer Euvindsonz Dacilas (A.K.A. Euvindso Dacilas), while assigned to the Housing Bureau, Viper 4, on or about and between June 27, 2009 and July 14, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Dacilas was absent without leave from the Department, to wit: Police Officer Dacilas failed to report to work, without permission from the Department, for approximately two hundred and seventy three (273) tours, for which he received over fifty thousand dollars (\$50,000) in compensation from the Department.  
*(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT  
GENERAL REGULATIONS

2. Police Officer Euvindsonz Dacilas (A.K.A. Euvindso Dacilas[]), while assigned to the Housing Bureau, on or about August 13, 2010, failed to bring his Activity Logs that cover the years 2009 and 2010 to his Official Department Interview as directed when Police Officer Euvindso Dacilas received the notification to appear for the Official Department Interview.

P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY – GENERAL  
GENERAL REGULATIONS

3. Police Officer Euvindsonz Dacilas (Euvindso Dacilas), while assigned to the Housing Bureau, Viper 4, on or about July 7, 2010, while at the Department's Bronx Health Care Unit, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Dacilas wrongfully impeded a Department investigation, to wit: when asked by Sergeant Kenneth Smith, Commanding Officer of the Bronx Health Care Unit, whether he reported to work in June, July, August, September, October, November and December of 2009, Police Officer Dacilas indicated that he did.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT GENERAL REGULATIONS

4. Police Officer Euvindsonz Dacilas (A.K.A. Euvindso Dacilas), while assigned to the Housing Bureau, Viper 4, on or about August 13 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Dacilas wrongfully impeded a Department investigation, to wit: Police Officer Dacilas stated during his official Department interview, in sum and substance, that he could not recall his discussion regarding his duty status with Sergeant Kenneth Smith and Dr. Michael Murray on July 7, 2010.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

Disciplinary Case No. 2010-3371

1. Police Officer Euvindso Dacilas, assigned to the Brooklyn Court Section, on or about December 15, 2010, after having been returned to duty by a Department Surgeon failed to report back to work for his 1<sup>st</sup> Platoon tour on December 15, 2010, as ordered.

P.G. 205-01, Page 4, Paragraph 30 – REPORTING SICK PERSONNEL MATTERS

2. Police Officer Euvindso Dacilas, assigned to the Brooklyn Court Section, on or about December 14, 2010, failed to immediately notify a Brooklyn Court Section supervisor of his being returned to duty by a Department Surgeon, as required.

P.G. 205-01, Page 4, Paragraph 29 – REPORTING SICK PERSONNEL MATTERS

3. Police Officer Euvindso Dacilas, assigned to the Brooklyn Court Section, on or about December 16, 2010, failed to comply with the lawful order of a supervising officer, to wit failed to report to the Brooklyn Court Section at 1000 hours as directed Sergeant Jimmie Fluker.

P.G. 203-03, Page 1, Paragraph 2    COMPLIANCE WITH ORDERS  
GENERAL REGULATIONS

Disciplinary Case No. 2011-4350

1. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about March 23, 2011, failed to notify the Desk Officer/Supervisor at his assigned Command at least two hours prior to the start of his tour that he was reporting sick, to wit: Police Officer Dacilas reported sick at approximately 0836 hours for his scheduled 0837 x 1700 hours tour.

Interim Order #27, Page 1, Dated August 2, 2010 - REVISION TO PATROL  
GUIDE 205-01 "REPORTING SICK"

2. Said Police Officer Euvindsonz Dacilas, on or about March 24, 2011, assigned to the Brooklyn Court Section, having been examined by a Department District surgeon on March 23, 2011 and found fit for duty on said date, reported sick again for the same reason on March 24, 2011, at approximately 0619 hours.

P.G. 205-45, Page 2, Additional Data – CHRONIC ABSENCE CONTROL  
PROGRAM

Disciplinary Case No. 2011-6362

1. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about November 20, 2011, failed to notify the Desk Officer/Supervisor at his assigned Command at least two (2) hours prior to the start of his tour that he was reporting sick, to wit: Officer Dacilas reported sick at approximately 0756 hours for his scheduled 0837 x 1700 hours tour.

P.G. 205-01 - REPORTING SICK  
Interim Order #27 Dated 2010

2. Said Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about November 21, 2011, having been examined by a Department Surgeon and found fit for duty at 0900 hours on said date reported sick again for the same reason at 1244 hours at the Brooklyn Court Section.

P.G. 205-45, Page 2, Additional Data – CHRONIC ABSENCE CONTROL  
PROGRAM

3. Police Officer Euvindsonz Dacilas, assigned to the Brooklyn Court Section, on or about November 21, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer could not account for his whereabouts from 0914 hours from Medical Division until his return to the Brooklyn Court Section at 1200 hours.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

Disciplinary Case No. 2012-7741

1. Police Officer Euvindsonz Dacilas, assigned to Brooklyn Court Section, on or about and between May 29, 2012 and June 13, 2012, at a location known to this Department, having been directed to appear at the Medical Division, failed to timely appear for said assignment on three (3) separate dates wherein said officer was late for a total of approximately seven (7) hours and (1) one minute.

P.G. 203-03, Page 1, Paragraph 3 – COMPLIANCE WITH ORDERS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office. Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-1833

Respondent is found Not Guilty of Specification No. 1. He is found Guilty of Specification Nos. 2 and 3. Specification No. 4 is Dismissed.

Disciplinary Case No. 2010-3371

Respondent is found Guilty of Specification Nos. 1 and 3. Specification No. 2 is Dismissed.

Disciplinary Case No. 2011-4350

Respondent is found Guilty of Specification Nos. 1 and 2.

Disciplinary Case No. 2011-6362

Respondent is found Guilty of Specification Nos. 1 and 2. Specification No. 3 is Dismissed.

Disciplinary Case No. 2012-7741

Respondent is found Guilty of the single specification in this case.

INTRODUCTION

The single most serious charge in this case involves an extended period of time, from June 27, 2009 to July 14, 2010, during which the Department claims Respondent was absent without leave. The Department's position is that Respondent was on restricted duty during this period of time and should have reported to work. Respondent claims he believed he was on extended sick leave.

According to Department calculations, Respondent failed to report to work for a total of approximately 273 tours and for which he was paid in excess of \$50,000.00. Respondent's pay has been garnished in varying amounts since.

It is not in dispute that Respondent was involved in a line-of-duty incident that occurred on November 23, 2008, in which Respondent was struck as a result of a motor vehicle collision. It is not in dispute that the collision was serious and that Respondent sustained injury to his back and to his leg. Respondent claims that his restricted duty status and related sick leave issues stem from that event.

Throughout this trial and during related appearances Respondent appeared to move and speak slowly. He gave the appearance that something was amiss either physically or psychologically. The Department essentially viewed this as a form of malingering while Respondent, through counsel, asserted that this was in fact his condition and that it affected his ability to understand that he was supposed to report to work.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

Department called Captain Larry Chambers, Police Surgeon Peter Galvin, Lieutenant Robert Simmons, Sergeant Luis Hernandez, Police Administrative Aide Tihesha Quainoo, Police Administrative Aide Cherise Davis-Odum, Lieutenant Dominick Valenti, Sergeant Michael Hengel, Sergeant Jimmie Fluker, and Police Officer Kevin Geoghan.

Captain Larry Chambers

Chambers, a 13-year member of the Department, is currently assigned to Detective Borough Queens. While assigned to the Housing Bureau Investigations Unit in July 2010 he was assigned an investigation pertaining to Respondent. He explained that the investigation commenced when the Medical Division alerted the Housing Bureau on July 7, 2010 that Respondent had been returned from sick leave to restricted duty status on June 26, 2009 but never reported for work at his command. His command at the time was Viper 4, which was overseen by Police Service Area (PSA) 8 which in turn fell under Housing Borough Bronx/Queens. Chambers explained that when a member of a Viper unit is restored to duty after sick leave, the district surgeon informs the member that he is being returned to duty. The surgeon also provides the member a Permission to Leave Residence pass, on which the surgeon indicates the date to return to duty. Any instruction for the member is repeated by Medical Division staff. In addition, the member is presented with a copy of the Sick Report and signs the report to acknowledge receipt of instructions. The member is also issued a Return From Sick Report for him to give to the desk officer at his command. In Respondent's case, he should have returned

his Return From Sick Report to the desk officer at PSA 8. In addition, the Medical Division would have notified Respondent's command by both a telephone message and FINEST message. In Respondent's case, these messages should have gone to Housing Borough Bronx/Queens. In actuality, however, the telephone message concerning Respondent's return to duty was sent to PSA 5. This is because both PSA 5 and Housing Borough Bronx/Queens were listed as Respondent's assigned command on his Sick Report.

On Viper 4 roll calls, Respondent was listed as being out on sick leave. Lieutenant Robert Simmons (who was the Integrity Control Officer) and Sergeant Luis Hernandez (who was the Assistant Integrity Control Officer) at PSA 8 were added as subjects to the investigation for errors in Respondent's time records. Chambers explained that at some point in February 2010, Respondent's Employee Time Records were changed from sick status to old-line-of-duty status. According to Medical Division records, at no point between June 26, 2009 and July 7, 2010 did Respondent call the Medical Division to go out of residence. Respondent ultimately returned to work on July 15, 2010. Between July 7 and July 15, no steps were taken to ensure that Respondent returned to duty. He was under surveillance during that period. Respondent was the subject of an official Department interview in August 2010. Although he was notified before the interview to provide his Activity Logs for investigators, he failed to bring his logs to the interview and did not provide an explanation for this failure.

During cross-examination, Chambers testified that Respondent was returned to duty on June 26, 2009 by Police Surgeon Peter Galvin of the Medical Division. When Chambers spoke with Galvin, Galvin did not have an independent recollection of restoring Respondent. Although Respondent would have signed a Sick Report that

contained a caption at the bottom stating the date and time of the restoration, Chambers saw neither the Sick Report nor a Return From Sick Report during the course of his investigation. The police officer who received the telephone message at PSA 5 never informed the Medical Division that the message should have gone to PSA 8. PSA 8 was never notified on June 26 that Respondent was returned to duty. Chambers was not able to obtain a copy of the FINEST message that pertained to Respondent's restoration, nor did he locate the Medical Division staff member who would have generated the message.

Respondent was first assigned to Viper 4 in April 2009 because he was on restricted duty for medical reasons. Chambers did not know why Respondent was listed on the roll call as being out on sick leave after the date that he was restored to duty. It was Hernandez who switched Respondent's status from sick leave to old-line-of-duty in February 2010. Chambers did not know what Hernandez relied on when he made the change. For his misconduct, Hernandez received a Schedule "B" Command Discipline (CD). Simmons was also issued a CD. Neither of these supervisors received Department charges for failing to realize that a police officer was out of work for a year without authorization. At no point between June 27, 2009 and July 7, 2010 did anyone from Viper 4, PSA 5, or PSA 8 call Respondent at home to tell him he was supposed to be at work. Respondent went to the Medical Division at least once a month during that period. He sometimes showed up late for his appointments, and he went to the wrong location on at least one location. Nobody with whom Chambers spoke during the course of the investigation had an independent recollection of telling Respondent to report to work.

There were times during Respondent's official Department interview that a significant lapse of time passed between the time a question was asked and the time that Respondent provided an answer. Chambers was unaware that Respondent had been

[REDACTED] for three weeks. Chambers did not ask Respondent at the interview if he was on any pain medication. Respondent stated in the interview that he thought he was on sick leave. He was not provided with a Return From Sick Report on July 7, 2010. Neither a FINEST nor telephone message were sent to Viper 4 on that day. Similarly, Respondent's duty status was not changed on his time record that day. Respondent was involved in a gas station business, but the business went bankrupt. Investigators could not confirm that Respondent was engaged in off-duty employment during the period that he was absent without leave.

Chambers was recalled for additional testimony and he confirmed that he conducted an official Department interview of Sergeant Kevin Smith of the Medical Division on July 29, 2010. Smith stated in the interview that on July 7, 2010 Department Surgeon Michael Murray brought it to his attention that there was confusion concerning Respondent's duty status. Subsequent computer checks showed that Respondent was on restricted duty status. When Smith asked Respondent if he was aware of this, Respondent acknowledged that he was. When Smith asked him why there was a Return From Sick Report in his folder, Respondent replied that he did not know. When Smith asked him approximately two weeks later if he had worked in July, August, September, October, November, and December of 2009, Respondent replied that he had. [DX 13A is the transcript of Chambers' interview with Smith.]

Chambers conducted an official Department interview of Sergeant Lorena Garcia of the Special Medical District on August 12, 2010. Garcia stated in the interview that on June 24, 2009 she signed Respondent's Sick Report. Although Garcia did not have an independent recollection of interacting with Respondent on that day, she explained that when an officer reported to her office he would bring his medical folder to her after

meeting with a surgeon. She would look at the paperwork in the folder and discuss with the officer any instructions regarding duty status or return dates. She would then have the officer sign the Sick Report, and she would notify the officer's command of the return to duty date. [DX 13B is the transcript of Chambers' interview with Garcia. DX 13 is the compact disc recording of both the Smith and Garcia interviews.]

During cross examination, Chambers testified that Smith was the Commanding Officer of the Medical Division's Bronx facility. Smith discovered the confusion over Respondent's duty status after Respondent indicated to Murray that he was out sick. Respondent was incorrect in his belief that he was still on sick leave. Smith was not certain where Respondent was assigned at the time. Some of Respondent's Sick Reports indicated that he worked at PSA 5. Other Sick Reports indicated that he worked at Viper 4 or Housing Borough Bronx/Queens. Respondent appeared confused and gave a blank stare while Smith tried to ascertain his true duty status. Similarly, Garcia told Chambers that she had to treat Respondent like a child because he did not seem to understand anything, and other supervisors described Respondent as confused and disoriented. Respondent would have to call his wife to determine when he was available for follow-up appointments at the Medical Division. Even after Garcia told him that he was not supposed to report to the Special Medical District anymore and should report to the Medical Division's Bronx facility instead, Respondent still reported to the Special Medical District in error. To Chambers' knowledge, no psychological help was offered to Respondent.

After Garcia saw Respondent on June 24, 2009, she contacted PSA 5 to make a notification that Respondent was being returned to duty. The notification was made in error since Respondent was not assigned to PSA 5. Whoever took that notification

indicated to Garcia that the notification would be forwarded to the proper command. To Chambers' knowledge, the notification was never actually forwarded to Viper 4. Similarly, while a FINEST message would have been generated, Chambers did not have any proof to believe that such a message was provided to Viper 4.

Police Surgeon Peter Galvin

Galvin is currently employed as a police surgeon at the Special Medical District. He explained that the Special Medical District deals with members of the service who have been designated Chronic Sick – Category B. He also explained that members on restricted duty status do clerical tasks within the command instead of doing patrol. Members who are Chronic Sick – Category B and are also on restricted duty status are required to report to the Special Medical District for evaluation once a month.

Upon review of Respondent's Sick Reports, Galvin testified that Respondent reported sick on March 1, 2009 and was returned to duty on restricted duty status as of March 6. Respondent next went sick on March 10 because he had a cold. The next day, Galvin saw Respondent and returned him to duty as of March 13. Respondent signed the Sick Report while at the Medical Division on March 11. Galvin explained that in addition to verbal instruction, every officer who is returned to duty at the Special Medical District signs the Sick Report to acknowledge awareness of the return date. Respondent reported sick again on March 19 because he had oral surgery the previous day. Because Respondent failed to provide documentation of the surgery, Galvin returned him to duty that same day. Respondent again signed the Sick Report.

Respondent next reported sick on April 4 for back pain and a cold. Galvin saw Respondent on April 6 and returned him to duty as of April 9. Respondent next reported

sick on April 29, and he reported sick again on May 26 for oral surgery. Respondent had a note about the surgery when he saw Galvin on May 28, and Galvin returned him to duty as of May 30. Respondent next reported sick on June 16 for more dental work, but he failed to bring documentation when he met Galvin and was returned to duty as of June 20. He went sick again on June 22 for more dental work and was returned to duty on restricted duty as of June 26. Members of the service who are designated restricted duty are required to report to work at their commands for their regularly scheduled tours of duty. According to Galvin, Respondent would have signed the Sick Report, received verbal instruction, and also received a Return From Sick Report each time that he was returned to duty. [Department's Exhibit (DX) 1 consists of Respondent's Sick Reports for the period of March 1 through June 26, 2009.]

When Galvin saw Respondent at the Medical Division, he sometimes issued Respondent passes that allowed him to go out of residence without having to notify the Sick Desk. For example, on June 24, 2009 Galvin issued Respondent a pass to be out of residence between 2:00 and 6:00 p.m. on June 24 and June 25. At no point after June 26 did Respondent ever reach out to Galvin for additional passes. [DX 2 consists of Permission to Leave Residence passes that were issued to Respondent between December 2008 and June 24, 2009.]

Upon review of restricted duty monthly evaluations of Respondent, Galvin testified that Respondent was first placed on restricted duty status in February 2009. Galvin first evaluated him on March 11 of that year and determined that Respondent should be maintained on restricted duty. Galvin next saw Respondent on April 6 and again determined that he should stay on restricted duty. At their next meeting, Galvin determined that Respondent should continue on restricted duty due to dental work.

Galvin determined that Respondent should continue on restricted duty after meeting with him on June 9, July 14, September 14, and October 13, 2009. Galvin reached the same determination on February 18, March 19, and April 19, 2010. Galvin did not evaluate Respondent after that time because Respondent was taken off of Chronic Sick – Category B status. [DX 3 consists of the restricted duty monthly evaluations of Respondent.]

During cross-examination, Galvin conceded that he did not have an independent recollection of telling Respondent that he would be put back on restricted duty on June 26, 2009. At a June 24 meeting, Galvin would have given Respondent a piece of paper about his return to duty. While somebody at the Medical Division would have called Respondent's command with the return to duty information, Galvin would not have made the call himself. Galvin did not know which command received the call. Because Galvin returned Respondent from sick leave to restricted duty as of June 26, Galvin believed that Respondent was back at work at the time of their July 14 meeting. Galvin did not confirm that Respondent was in fact going to work. Nobody from Respondent's command ever called Galvin to ask about Respondent's duty status. Based on the Medical Division documentation, there was a gap in Respondent's visits between October 13, 2009 and February 18, 2010. Galvin testified that such a lengthy gap was unusual. He reiterated that he did not evaluate Respondent after April 19, 2010 because Respondent was no longer on Chronic Sick – Category B status. Respondent was, however, evaluated at the Department's Bronx clinic on May 18 and June 15 of that year.

Lieutenant Robert Simmons

Simmons, a 17-year member of the Department currently assigned to Highway Unit Number 1, was formerly assigned as the Integrity Control Officer (ICO) at PSA 8. He explained that PSA 8 encompassed Viper 4, Viper 4 supervisors prepared roll calls for that unit and sent them to his (Simmons') office, and he in turn faxed the roll calls to the bureau. Simmons observed that between June 2009 and July 2010 Respondent was listed on the roll call as being out on sick leave. Simmons did not make any inquiries to verify Respondent's status. As a result, he received a CD and forfeited two penalty days.

Simmons explained that when members of the service assigned to Viper 4 were returned to duty by the Medical Division, notifications were made to Housing Borough Bronx/Queens. The notifications were then relayed to the PSA 8 desk officer and ICO. At no point in June 2009 did Simmons receive any notification regarding Respondent's duty status.

During cross-examination, Simmons confirmed that he stated in an official Department interview that "the system was flawed." He was referring to "the notification process between the communication breakdown between [his] office and the Housing Bureau Bronx Queens." He continued, "Viper personnel didn't have their own command code at the time so everything had to come through the bureau before it came to my office." Viper 4 and PSA 8 are not located in the same building. The notification system has since been changed. Simmons was ICO of PSA 8 during the period between June 27, 2009 and July 14, 2012. During that time, he was responsible for the roster and roll call at Viper 4. Had he known that Respondent was not supposed to be carried as being out on sick leave, he would have called Respondent and asked where he was. He did not recall if Respondent's status on Department records was ever changed to old-line-of-duty, nor did he recall the assistant ICO (Hernandez) ever informing him that Respondent's

status had been changed to that designation. Had Respondent's status been changed to old-line-of-duty, it would have been reflected on the Absence and Tardiness Record but not on the roll call.

Simmons, who reviewed Viper 4 roll calls on a weekly basis, would have seen Respondent as being listed as out on sick leave. According to Simmons, it was not unusual to have an officer out for an entire year.

Sergeant Luis Hernandez

Hernandez, a 12-year member of the Department, is currently assigned as the assistant ICO at PSA 8. Viper 4 and Viper 9 fall under PSA 8, and Hernandez was responsible for verifying the schedules at those Viper units. He met Respondent at Viper 4 shortly after Respondent was assigned to the command. It was common for members of the service assigned to Viper to be on restricted duty status, and Respondent informed Hernandez that he was working at Viper because he had been struck by a car while on duty and sustained a back injury. Hernandez had no further conversations with Respondent regarding his duty status or injuries.

About the notification process for members of the service being returned to duty after being out on sick leave in June 2009, Hernandez explained, "Viper members were assigned to our bureau, which is a different command code than PSA 8, so whenever they went sick the notification would go to the bureau and then the bureau would give us a telephone message log saying when they were back or not and they will fax over the actual FINEST message over to the PSA." While Hernandez would check the Telephone Message Log for messages directed to him or his office, he did not specifically look for messages relating to duty status. He never saw a notification from Housing Borough

Bronx/Queens regarding the change of Respondent's duty from being out on sick leave to being returned to work on restricted duty.

Hernandez explained that while a member of the service on regular sick leave receives his regular salary, a member on old-line-of-duty sick receives a tax exempt salary. On March 1, 2010, Police Administrative Aide Tihesha Quainoo, who kept time records at Viper 4, asked him in which of these two sick categories Respondent belonged. Hernandez told Quainoo that Respondent was on old-line-of-duty sick. He explained that he based this assumption on a prior conversation that he had had with Respondent about Respondent going out sick because he needed surgery on his back. Hernandez did not take any steps to verify this assumption. He subsequently received a CD for changing Respondent's sick status without first conferring with the Medical Division. Since the incident, the notification process has been changed so that Medical Division notifications regarding members assigned to Viper 4 now go directly to PSA 8.

During cross-examination, Hernandez testified that he could not recall specifically when he had his conversation with Respondent, but it would have had to have taken place prior to June 2009. At the time of the conversation, Respondent was working midnight tours in Viper 4. He walked with a cane. According to Hernandez, it was not unusual for a member assigned to a Viper unit to be out sick for more than a year. When a sick member assigned to PSA 8 was returned to work, the bureau would notify PSA 8 via FINEST message. The desk officer would relay the notification to roll call personnel. No FINEST message would be sent to PSA 8 for the return of a member assigned to Viper 4. While the bureau should have received a notification from the Medical Division, Hernandez did not personally know if a notification was ever generated with respect to Respondent. Similarly, the bureau should have made a telephone notification

to PSA 8, but Hernandez never saw a Telephone Message Log entry about Respondent's return. Hernandez reviewed Viper 4 roll calls on a weekly basis, but he never called the Medical Division or any other unit to see how long Respondent would be out on sick leave.

Hernandez did not recall if Quainoo asked him for paperwork to substantiate the change in Respondent's designation from regular sick to old-line-of-duty sick. Hernandez never looked for any paperwork to substantiate the change. He did not recall if he informed Simmons of the change.

During redirect examination, Hernandez explained that while Viper units have their own command codes today, back in 2009 and 2010 they shared codes with the bureau.

During recross-examination, he testified that as far as he knew the change in designation from regular sick to old-line-of-duty sick would have been reflected on Respondent's Absence and Tardiness Record. He could not be certain of this, however, since he never actually saw the paperwork. Similarly, he did not recall if the change was reflected on the Viper 4 roll calls.

Police Administrative Aide Tihesha Quainoo

Quainoo, a six-year member of the Department, is currently assigned to PSA 8. She is responsible for payroll at PSA 8, as well as at Viper 4 and Viper 9. On March 1, 2010, Hernandez instructed her to change Respondent's status from regular sick to old-line-of-duty sick. Quainoo asked Hernandez for verification of Respondent's sick status, but Hernandez failed to provide any. Quainoo proceeded to make the change on Respondent's Employee Time Records, going back eight months to the date that

Respondent's sick leave commenced. Although she was not required to note the change on any other paperwork, she did make a note about her March 1 conversation with Hernandez on Respondent's 2010 Absence and Tardiness Records. [DX 4 is Respondent's Absence and Tardiness Records for 2009 and 2010.] At the time, notifications from the Medical Division regarding members assigned to Viper 4 went to the bureau. The bureau, in turn, forwarded the notifications to the ICO at PSA 8.

During cross-examination, Quainoo explained that the PSA 8 ICO informed roll call and payroll personnel of which members of the service were out on sick leave. On June 27, 2009, it was Hernandez who informed Quainoo that Respondent had gone out sick. Because the Viper units are housed in a different building, Quainoo did not see the members assigned there. She reviewed Viper 4 roll calls on a weekly basis, and there was no reason for her to believe that the roll call entries indicating that Respondent was on sick leave were inaccurate.

Police Administrative Aide Cherise Davis-Odum

Davis-Odum, an 11-year member of the Department, is currently assigned as a timekeeper at PSA 8. At Simmons' directive, she called Respondent at Viper 4 on July 15 or 16, 2010 and instructed him to submit his Return From Sick Report. The next day, Respondent came to PSA 8, but he did not have a Return From Sick Report in his possession. Davis-Odum asked him for the required documentation twice, but Respondent seemed confused as if he did not understand what Davis-Odum was saying. Respondent showed Davis-Odum a medical note about a dental visit. Davis-Odum was not certain of the date of the note. When Davis-Odum showed Respondent a sample

Return From Sick Report, he "just said okay" and left. Respondent never provided her with a Return From Sick Report.

During cross-examination, Davis-Odum confirmed that she described Respondent as "look[ing] [REDACTED]" in an official Department interview. When Davis-Odum asked Respondent a question, he just stared at her and looked through his papers. There were delays between Davis-Odum's questions and Respondent's answers. Davis-Odum never before had to show a member of the service what a Return From Sick Report looked like. Respondent came back to see Davis-Odum the next day. She asked him again for his Return From Sick Report, and Respondent gave her a Sick Report form, which is a different document.

Lieutenant Dominick Valenti

Valenti, a 27-year member of the Department, is currently assigned as Commanding Officer of the Medical Division's Absence Control and Investigations Unit. In July 2010, at the request of the Housing Bureau Investigations Unit, he provided Chambers with Respondent's Medical Division records. Valenti explained that a member of the service on sick leave needs to notify the Sick Desk to be placed in the Out of Residence Log whenever the member wants to leave home. Members are permitted to leave home to go to the doctor, supermarket, or church. [DX 5 is the Out of Residence Log, showing entries for Respondent between March 24, 2008 and June 26, 2009. There were no entries made for Respondent between June 26 and the time that the report was printed on July 7, 2010. ]

Valenti explained that members on restricted duty status have to visit a Department surgeon once a month in order for the surgeon to determine if the member

can be restored to full duty. (Members on long-term sick leave also have scheduled revisits with Department surgeons.) While restricted members may ask to reschedule their monthly appointments, they generally do not miss these appointments. When a member applies for a disability pension, the Article II Medical Board reviews the entire medical folder relating to the member's injury. Respondent at one point submitted an application for a disability pension. Valenti was not aware before July 2010 that Respondent had not appeared for work for over a year. He explained, “[Respondent] had been returned to duty in June of 2009, and telephone messages were made as well as a FINEST message generated, so as far as we're concerned on our end, he's returned and he's also provided with documentation to present back to his command.”

A member of the service going out on sick leave is supposed to call the Sick Desk to report sick at least two hours before the start of his scheduled tour of duty. On March 23, 2011, Respondent reported old-line-of-duty sick one minute before his scheduled 8:37 a.m. start time. Respondent told Valenti on the phone that morning that he had been trying to call the Sick Desk for several hours but was unable to get through. Valenti's tour started that day at 6:00 a.m., and he was at the Sick Desk area between 7:00 and 7:15 a.m. He explained that at least three police officers were answering phones at the Sick Desk that morning. In addition, the Sick Desk has an automated system with a screen on the wall that can be monitored by the supervisor. This screen allows the supervisor to see who is on the phone, how long calls last, whether calls are incoming or outgoing, and whether there are any calls waiting. The busiest time of day at the Sick Desk is between 4:00 and 6:00 a.m., which is when members assigned to the day tour call to report sick. Upon review of the call records for that day, Valenti learned that only approximately 40 calls had been received during the two-hour window that Respondent was required to

call, and there was no record of any dropped calls. During the 15-minute period that Valenti was actually at the Sick Desk that morning, the phones were not busy and there were no calls waiting. In addition, Valenti pointed out that Respondent had the direct phone numbers to his office and the Special Medical District and could have easily called either of those lines.

Respondent reported to the Medical Division at approximately 10:35 a.m. on March 23, 2011 and met with Department Surgeon Lea Dann. Respondent complained of knee pain. Although Dann noted slight swelling to Respondent's left knee, Dann returned him to duty as of 5:00 p.m. that day. At approximately 6:30 a.m. the following day, Respondent reported sick again for the same knee injury. Upon examination at the Medical Division on March 24, Galvin noted no swelling and found no significant reason Respondent could not return to work. Respondent was returned to duty as of 11:00 a.m. that day. On both March 23 and 24, Respondent was given a Return From Sick Report for him to turn in at his command. [DX 6 consists of Respondent's Sick Reports for March 23 and 24, 2011. DX 7 consists of the Return From Sick Reports for those days.]

Both Sergeant James Galimi and Sergeant Michael Hengel of the Absence Control and Investigations Unit informed Respondent of the content of Patrol Guide Procedure 205-45, which is the section on Chronic Sick protocol. The section states that members of the service who are designated Chronic Sick – Category B and are found fit for duty by the Special Medical District may be suspended and served with Department charges if they report sick again for the same reason prior to their next scheduled tour of duty and no injury or illness is found. As a result, Respondent was suspended from duty on March 24, 2011.

Respondent reported sick at approximately 7:50 a.m. on November 20, 2011. This was again in violation of the rule that members of the service should report sick at least two hours prior to the start of their scheduled tours. Because it was a weekend, Respondent reported that day to the Weekend Surgeon, Stephen Hornyak. Hornyak evaluated Respondent and kept him out on sick leave with directions to visit Galvin the following day. Galvin ultimately returned Respondent to work as of 9:00 a.m. on Monday, November 21. At 9:14 a.m. that day, Valenti signed Respondent out at the Medical Division and directed him to report to his command. Approximately two hours later, a sergeant from Respondent's command notified Valenti that Respondent had still not appeared. Respondent did not appear at work until some time after 12:00 p.m., at which point he went sick again. The next day, Galvin evaluated Respondent for the same old-line-of-duty injury and returned him to work as of 10:00 a.m. Respondent was ultimately suspended a second time, as per Patrol Guide Procedure 205-45. [DX 9 consists of Respondent's Sick Reports for November 20 and 21, 2011. DX 8 consists of the Return From Sick Reports for November 21 and 22.]

About his observations of Respondent, Valenti testified, "Generally, when I'm interacting with him or he's dealing with the doctor, he's got extremely slow responses to questions and indicates an inability to recall events; however, on a number of occasions, I've seen him interacting normally with other members of the Department; particularly when he didn't think I was paying attention." Valenti continued, "I've seen him holding conversations on his cell phone where he's immediately responding to whoever he is speaking to, and sometimes that's only minutes after demonstrating to the doctor an inability to recall." Upon review of Respondent's history, Valenti did not see any indication of Respondent ever seeing a Department doctor about head trauma or injury.

Nor was Valenti aware of Respondent ever going out on sick leave with a complaint of head trauma or injury. No neurological evaluations relating to head trauma have ever been conducted on Respondent.

During cross-examination, Valenti confirmed his awareness that Respondent was involved in a serious line-of-duty car accident on November 23, 2008. He did not recall hearing anything about Respondent suffering head trauma or losing consciousness in the accident. He never spoke with any of the doctors who treated Respondent. It was possible that Respondent received treatment from doctors who were not noted in his Department file. Respondent was out of work for over a year and was arrested as a result. During the course of his career, Valenti had never experienced a member of the service being absent without leave for such a long period of time without the Department being aware of it. The Department has a system of checks and balances to prevent something like this from happening, but the system failed in Respondent's case. The Department knew Respondent's address and telephone number.

Respondent attended all of his monthly appointments at the Medical Division. Respondent was supposed to report to work at his command after his appointments. While a FINEST message would have automatically been sent to Respondent's command upon his return to duty, Valenti never found the message during the course of his investigation. When asked why he could not find the message, Valenti explained, "Because the Viper Unit did not receive FINEST messages[,] the FINEST messages went to the overhead command which was the borough." Although the message was supposed to be forwarded from the borough to Viper 4, it was not forwarded in this case. Valenti did not know if the person who was supposed to forward the message was ever disciplined. A telephone message regarding Respondent's return to duty was directed to

a supervisor in the borough. Valenti did not know why the message was never properly forwarded to Viper 4. As a result of the Department's experience with Respondent, there is a new notification procedure which involves emailing the command of every member who reports to the Medical Division.

Valenti spoke with Respondent virtually every time that Respondent reported to the Medical Division starting in 2009. Respondent gave a blank stare whenever Valenti asked him a question. At one point Respondent was sent to the [REDACTED] [REDACTED]. The visit to the [REDACTED] did not result in a change in duty status. It appeared to Valenti that Respondent was playing "a bit of a game."

According to Valenti, members calling the Sick Desk do not get busy signals. Instead, "you're put into the queue and you're then directed how long it's going to take for the operator to answer, so as long as you remain on the line, the phone will be answered." Valenti never obtained a copy of Respondent's phone records in order to determine if Respondent attempted to call the Sick Desk on March 23, 2011. Valenti has members assigned to the Special Medical District sign the bottom of their Sick Reports, on which it is written the time and date that they are returned to duty.

Upon further questioning, Valenti explained that he has members sign the Sick Reports to ensure that there is no misunderstanding as to the dates that they are returned to duty.

Valenti was recalled for additional testimony and he testified that Respondent reported old-line-of-duty sick at approximately 2:57 a.m. on May 27, 2012. A Department surgeon met Respondent later that day and left him on Sick Report. The next

day, Valenti had a Sergeant Arianna call Respondent and instruct him to report to the Medical Division at 9:00 a.m. on May 29. On May 29, Respondent did not appear at the Medical Division until 1:02 p.m. Because the operating hours of the Special Medical District were from 9:00 a.m. until 11:30 a.m., there were no doctors available to assess Respondent's duty status. Respondent was, therefore, ordered to come back at 9:00 a.m. the following day. On May 30, 2012, Galvin met with Respondent and returned him to duty at approximately 9:30 a.m.

At approximately 5:40 a.m. on June 5, 2012, Respondent again reported old-line-of-duty sick. Respondent arrived at the Medical Division at 11:17 a.m. that day. Although the report time was supposed to be 9:00 a.m., Respondent told Valenti that an unknown person at the Sick Desk had instructed him to report at 10:00 a.m. A doctor evaluated Respondent and returned him to duty.

On June 11, 2011, Valenti notified Respondent to report at 11:00 a.m. on June 13 for an official Department interview. Respondent did not appear for the interview until 11:42 a.m. In the interview, Respondent stated that he was late on May 29 because he had fallen asleep on the train. He did not notify anybody about his lateness. As for his lateness on June 5, Respondent told Valenti that he had missed his train that morning. Respondent could not recall which train he normally took or which station he used. As for his lateness on June 13, Respondent said something to the effect of, "I did the math wrong." Further investigation revealed that Respondent never used his Department-issued MetroCard.

Respondent reported sick again on July 5, 2012. When he reported late to the Medical Division that day, he told Valenti that he had had a problem again with the train. A sergeant assigned to the Special Medical District observed Respondent leave the

building that day, walk two blocks, put on a hat, and get in the passenger's side of a Toyota Camry.

During cross-examination, Valenti confirmed that although somebody picked up Respondent to drive him home from the Medical Division on July 5, Respondent could have gotten there that morning via public transportation. Nobody saw Respondent get out of a vehicle upon his arrival that day.

Arianna did not document anywhere the time that she told Respondent to report on May 29. Valenti explained that any member who is designated Chronic B is notified to report to the Medical Division at 9:00 a.m. Respondent was on time on May 30.

At the official Department interview, there were pauses between Valenti's questions and Respondent's answers. According to Valenti, Respondent took a significant amount of time to respond. In fact, Respondent took more time than anybody else Valenti has interviewed during the course of his career. Valenti believed that Respondent was putting on a charade. He based this belief on his observations of Respondent interacting normally with other members of the service. Valenti recently observed Respondent conversing normally with the office receptionist. Although Valenti did not personally take part in the conversation, he heard Respondent and the receptionist "bantering back and forth and even having a good laugh." Valenti has never contacted the [REDACTED] Section with respect to Respondent's [REDACTED] fitness.

Sergeant Michael Hengel

Hengel, a 28-year member of the Department, is currently assigned to the Medical Division's Absence Control and Investigations Unit. On July 12, 2010, he observed a tan minivan in the driveway of Respondent's [REDACTED] residence. He subsequently

observed Respondent driving the minivan to a closed gas station in [REDACTED], New York. He did not engage Respondent in conversation.

Respondent was on sick leave on December 14, 2010. Because Respondent was Chronic Sick – Category B, he was provided with a copy of a form regarding his responsibilities while out sick and designated Chronic Sick – Category B. Respondent signed the form and was given a copy for his own records. In addition, Hengel verbally instructed Respondent on the regulations for members designated Chronic Sick Category B. Hengel explained everything twice, and Respondent acknowledged that he understood. [DX 10 is a copy of the memorandum on Chronic Sick Designation B, signed by Respondent on December 14, 2010.]

During cross-examination, Hengel testified that he did not observe anything on July 12, 2010 to indicate that Respondent was involved in unauthorized off-duty employment. He did not know if Respondent saw him that day. When Hengel asked Respondent on December 14, 2010 if he understood the contents of the memorandum on Chronic Sick Designation B, Respondent replied, “Yes.” Respondent did not say anything further. Hengel did not recall any delay between his questions and Respondent’s answers. The only other interaction that Hengel had with Respondent was one time in 2011 when he had to get Respondent’s identification card. Hengel did not recall if Respondent said anything on that date. There were also several occasions that Hengel visited Respondent’s residence to have him sign a form, but they did not engage in conversation on those days.

Upon further questioning, Hengel explained that when he saw Respondent at the gas station, he was standing outside his vehicle while Respondent was seated in the minivan approximately 50 feet away.

Sergeant Jimmie Fluker

Fluker, a 28-year member of the Department, is currently assigned to the Brooklyn Court Section. Respondent was scheduled to work the Expedited Arrest Processing post during the first platoon on December 16, 2010, but he did not appear for duty. At a supervisor's direction, Fluker called Respondent and told him to report for duty at 10:00 a.m. for the second platoon. When Respondent stated on the phone that he was still out on sick leave and would return to work after his regular days off, Fluker informed him that he had in fact been restored to duty already and was expected to be at work for the second platoon that day. Fluker noted his telephone call with Respondent in a Command Log entry. [DX 11 is a copy of the Brooklyn Court Section's roll call for that day, and DX 12 is a copy of the Command Log.]

During cross-examination, Fluker testified that Respondent normally worked the first platoon, which started at approximately 11:30 p.m. and lasted until 6:30 a.m. the following day. Respondent was assigned to Fluker's unit a couple of months prior to the December 2010 incident. Fluker worked with Respondent three to five days a week during that period and had occasion to speak with him. Every time that they conversed, there were unusually lengthy lapses in time between Fluker's questions and Respondent's answers. Respondent spoke in a slow and deliberate fashion, and Fluker observed similar pauses when Respondent spoke with other people at work. Respondent sometimes complained about back pain and headaches. Although Respondent had shown up to work late in the past, Fluker did not recall other incidents of him not showing up at all. Fluker never spoke with the Medical Division about Respondent's return to duty.

During redirect examination, Fluker confirmed that Respondent was able to perform his assigned tasks at work. On recross-examination, he explained that

Respondent's tasks consisted of typing supporting depositions and giving out return dates for Desk Appearance Tickets. Fluker described Respondent as seeming "a little slow." This slowness was reflected in the work Respondent performed.

Police Officer Kevin Geoghan

Geoghan, a 14-and-a-half-year member of the Department, is currently assigned to the Special Medical District. He testified that on December 14, 2010, Respondent met with a doctor and was returned to duty as of 6:56 a.m. the next day. After the doctor informed Respondent of his return date, Geoghan repeated the information to Respondent, had Respondent sign the bottom of the Sick Report, and gave him a copy of the form. Geoghan also gave Respondent a copy of the Return From Sick Report but did not ask him to sign it. [DX 14 is a copy of the Sick Report for that visit, and DX 15 is a copy of the Return From Sick Report.]

After his interaction with Respondent that day, Geoghan notified Respondent's command of Respondent's return date. Geoghan called Respondent's command and spoke with a Police Administrative Aide. He documented the call in his command's Telephone Message Log. [DX 16 is a copy of the log page showing that Geoghan left a message about Respondent's return to duty with Police Administrative Aide Meyers.]

Respondent's Case

Respondent called Psychologist Anna Penque and Martine Dacilas as witnesses, and he testified in his own behalf.

Psychologist Anna Penque

Penque, a nearly three-year member of the Department, is currently assigned as a Psychologist Level II at the Medical Division's Psychological Evaluation Section. She obtained a master's degree and doctorate in psychology from the Massachusetts School of Professional Psychology. During her doctoral program she had several years of clinical training and did a year-long internship. She specialized in forensic psychology. She has experience assessing patients for depression, suicidal tendencies, and cognitive functioning. She makes these assessments based on a patient's physical appearance, eye contact, and responses. Penque has neither obtained board certification in police psychology nor published any articles in the field. She has never been qualified as an expert.

Every member of the service who is modified or coming off of suspension meets with a Department psychologist. Penque has assessed at least a hundred members of the Department. Her primary responsibility is to evaluate the members for fitness for duty evaluations. On June 10, 2011, Penque met with Respondent because he was coming off of suspended duty status. She recommended that [REDACTED]

[REDACTED] Prior to meeting with Respondent, she had referred a police officer to [REDACTED] on five or ten occasions. She has referred only two or three officers since her June 2011 meeting with Respondent. She explained that she makes such a referral when she is concerned that the officer [REDACTED].

Penque explained that she asked Respondent questions about his family at the June 2011 psychological screening. Respondent did not make eye contact with her and frequently closed his eyes. Respondent also delayed significantly before providing answers to her questions. She testified, "I would ask a question, and it was difficult at

times to know if he had heard me. I would repeat questions at times and wait for an answer." The interview lasted 45 minutes to an hour, and Respondent's affectation remained the same the entire time. During the course of the interview, Penque asked Respondent about his history of mental health treatment. Respondent told her that he had begun seeing a psychologist about a month earlier. He went to five or six sessions with the [REDACTED], Doctor Vanderleer, but he had to stop seeing her when he was suspended from duty. Vanderleer prescribed [REDACTED], which he reported as an [REDACTED] medication. He discontinued the medication when he was suspended from duty because he no longer had insurance coverage. Respondent denied ever being hospitalized psychiatrically. He explained to Penque that he started seeing Vanderleer because his wife was concerned that there was something wrong with him.

Respondent proceeded to tell Penque about his 2008 line-of-duty injury. He told her that he was struck by a vehicle during a car stop, was thrown six to eight feet, was briefly unconscious, and sustained injuries that included a broken knee and herniated discs in his back. He told her that he was out sick for approximately a year, but he got into trouble for his lengthy absence because the Department did not want him out of work for so long. Although he had chronic pain in his back and left knee, the only medication he took for the pain was aspirin and Nyquil. A doctor wanted to prescribe him pain medication, but he declined. When Penque asked him about sleep, Respondent replied that he had trouble sleeping since 2009, that he had difficulty falling asleep and experienced insomnia. He sometimes took Nyquil three to four times a week as a sleep aid. When Penque asked about his appetite, Respondent replied that he had not noticed any significant changes but had been gaining weight. When she asked about

concentration, he told her that he had difficulty focusing sometimes. His wife complained that he had problems concentrating. When Penque asked about symptoms of depression, Respondent noted that he had been feeling sad for two or three years. He acknowledged feeling helpless and having difficulty with motivation. He also acknowledged feeling apathetic, but he denied increased irritability or anger.

When Penque asked about [REDACTED], it took Respondent an extremely long time to reply. When he finally replied, he failed to provide a direct answer to her question. He just kept saying, "I don't know, oh, man." He then said, "[I] would like it all to disappear, I'm putting a lot of people through hell lately, wherever I turn it's not right with anyone." When Penque asked him if these thoughts ever made him want to hurt himself, he again failed to provide a direct answer. He just repeated that he sometimes wished he could disappear. He told Penque that he had been feeling that way for approximately a year, but he had never actually attempted to hurt himself. When she asked what he was living for, he replied that he did not know.

Penque asked Respondent whether or not he experienced hallucinations, and she examined him for delusional or paranoid content. She did not find anything concerning of that nature. When she asked about symptoms of anxiety, Respondent replied that he was worrying about the situation with his job and was having obsessive thoughts about it, but he was unable to be very specific about exactly what he was worried about. He told her that he was worrying about everything in general, it was difficult to stop thinking, and sometimes he was unable to sleep because his thoughts were racing. When she asked if he had supportive people in his life, he replied that "people were upset with him, his parents, his brother, his wife. They said they're mad at him, and . . . this was the reason why he felt it would be better to disappear. It was just too much to deal with." When she

asked what keeps him going, he replied that he would pray as much as he could. Penque stopped the interview at that point because she was concerned about [REDACTED]

Penque testified that when Respondent talked about disappearing, she did not know if he was talking about [REDACTED] or just wanting to leave his family. She referred him for [REDACTED] because his talk of disappearing concerned her, as did his response style. She explained, “[Respondent] couldn’t identify or couldn’t answer questions about [REDACTED] directly . . . it was a delayed response . . . he couldn’t identify anything worth living for.” Penque called Respondent’s wife, Martine, to ask how Respondent behaved at home. Martine informed Penque that Respondent seemed depressed since the accident, that he was withdrawn and had trouble sleeping. Martine proceeded to tell Penque that she had to get Respondent out of bed on a daily basis. Martine had set four alarms that morning but Respondent did not respond to any of them. At night when Respondent had trouble sleeping she would find him sitting in front of the computer just looking at the screensaver. Although Respondent had never mentioned [REDACTED] to Martine, Vanderleer warned her to keep an eye on Respondent because it might become an issue. Martine told Penque that Respondent used to talk about everything, but had become more withdrawn lately and it was getting worse. It was at a supervisor’s advisement that Penque referred Respondent to the [REDACTED] that day. An independent evaluation by [REDACTED].

Penque explained that during the interview Respondent responded “with yes and no [answers], but also provided complete sentences; however, it was difficult to elicit any response from him.” She reiterated that while there were significant delays in his responses, Respondent did answer the questions that were posed to him. It was only

when the topic turned to [REDACTED] that he failed to really answer the questions that were asked of him. Penque needed to repeat her questions at times.

[Respondent's Exhibit (RX) A consists of the Department's [REDACTED] records on Respondent. It contains records from [REDACTED], indicating that Respondent was hospitalized from June 13 through June 23, 2011. He was diagnosed at the hospital with [REDACTED]

[REDACTED] His thought pattern was described on the hospital discharge summary as linear, and there were no reported abnormalities to his perception. He was prescribed [REDACTED] for his depression and [REDACTED] for insomnia. He was sent for follow-up appointments with both a [REDACTED]. A progress report, prepared by Doctor Dana Devito and dated September 29, 2011, assessed Respondent as having major [REDACTED] and recommended his continued daily use of his prescription medications. RX A also contains a Department memorandum, written by Department [REDACTED] Marisa Barra and dated June 13, 2012, stating that "[REDACTED] does not show any evidence of a cognitive disorder which would preclude [Respondent] from performing police work. Medical records were reviewed and the evidence does not support organic based cognitive problems."]

Respondent

Respondent, a 19-year member of the Department, testified that he has been assigned to PSA 5 his entire career. He subsequently testified, however, that he was assigned to Viper 4 in 2010 and the Brooklyn Court Section in 2012. He did not know how many arrests he has made. He and his wife, Martine, have two children together. The children are ages [REDACTED] and [REDACTED], but he did not know their birthdates.

Respondent was on patrol conducting a car stop when a truck struck his Department vehicle. He lost consciousness and was taken to the hospital for a broken knee and injury to his back. Between June 27, 2009 and July 14, 2010, he reported to the district surgeon once a month for a status update and then went home afterward. According to Respondent, the Department surgeon did not tell him to go back to work on a restricted basis. It was his understanding that he was still out on sick leave during the 13-month period. He did not remember being told by the Department that he had been ordered to return to work in June 2009. Nor was he familiar with the conversation he had with Smith and Murray on July 7, 2010 regarding his duty status. According to Respondent, he did not hear anybody testify during this trial that he was supposed to be at work between June 2009 and July 2010. When asked if he understood what punishment the Department Advocate's Office was seeking with respect to these charges, he replied, "I know it's the pay dock and the suspensions."

According to Respondent, he notified the Brooklyn Court Section supervisor that he was returned to work by the Department surgeon on December 14, 2010, and he returned to work at that command the following day. He did not report to the Brooklyn Court Section at 10:00 a.m. on December 16 as directed by Fluker because he was out sick that day.

Respondent did not remember if on March 23, 2011 he notified the desk officer at his command at least two hours prior to the start of his tour that he would be reporting sick. Nor did he remember if he reported sick on March 24, 2011 after having been found fit for duty the previous day; if he notified his command at 7:56 a.m. on November 20, 2011 that he would be reporting sick for a tour that started at 8:37 a.m.; or if he reported sick at 12:44 p.m. on November 21 after having been found fit for duty that

morning. When asked where he was on November 21 between his exit from the Medical Division and arrival at the Brooklyn Court Section, Respondent explained that he was out sick. According to Respondent, he did not fail to appear in a timely manner at the Medical Division on three occasions between May 29 and June 13, 2012.

According to Respondent, he did not feel that his 2008 line-of-duty accident significantly contributed to his loss of memory and his inability to focus on when to appear at work. At the same time, however, he does not feel that his ability to focus is as sharp today as it was before the accident. He testified that he is not currently taking any medications. Although he is supposed to be seeing [REDACTED], he is not doing so because his insurance will not cover it. Although he is unable to help his children with their homework, he believes he is capable of doing police work. Although Martine wakes him up in the mornings, he would be able to get to work on time even without his wife's assistance.

During cross-examination, Respondent confirmed that his line-of-duty car accident occurred on November 23, 2008. He did not remember being returned to duty at some point prior to June 27, 2009. Nor did he recall seeing Galvin at the Special Medical District in 2009. He confirmed that he signed the Sick Reports when doctors at the Medical Division returned him to duty.

Respondent did not recall having a conversation with Smith on July 7, 2010. Nor did he recall having an official Department interview on August 13, 2010. There was a period of time that Respondent was assigned to Viper 4, but he did not remember the name of his supervisor at that command.

Respondent did not remember being returned to duty by Galvin on December 14, 2010 and not going back to work. Nor did he recall failing to comply with Fluker's order to report to the Brooklyn Court Section on December 16.

According to Respondent, he was not instructed by members of the Medical Division about the Patrol Guide procedure for members of the service designated Chronic Sick Category B. He was not aware that members with that designation who went out sick for one illness and were returned to duty could not immediately go out sick again for the same illness.

Between May 29 and June 13, 2012, Respondent took Metro-North and the 4 train to work. According to Respondent, he paid for his transportation since he has not had a Department-issued MetroCard since 2011. Respondent's wife sometimes drove him to the Medical Division when he had appointments there. There were times that Respondent drove himself to work in 2011 and 2012.

During redirect examination, Respondent testified that he remembered being admitted to [REDACTED], but he did not recall the specific dates of his hospitalization. He was [REDACTED] at the time of his admittance to the hospital. He is no longer having those thoughts.

According to Respondent, he did not work in PSA 8 in July 2010. He did not remember having conversations with Davis-Odum or having to turn in Sick Reports at work. He was out on sick leave for seven to nine months after his car accident. He saw doctors at the Medical Division during that period, but no doctor ever told him to go back to work. He understood that he was testifying under oath and needed to tell the truth. He was not certain if he was testifying in the month of November or December.

[RX B consists of Respondent's medical records from [REDACTED] Hospital, covering the period between June 13 and June 23, 2011. On the day of Respondent's admittance to the hospital, an examining physician noted, "On exam I cannot rule out a [REDACTED]." After one [REDACTED] [REDACTED] exam of Respondent during the course of his hospital stay, he was described as [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Martine Dacilas

Martine, a resident of [REDACTED], is currently unemployed. She has been married to Respondent for 18 years. They have two children together, ages [REDACTED] and [REDACTED]. Since Respondent's November 23, 2008 car accident, he has no longer been involved in anything, especially the children. She explained that Respondent used to do homework and play games with the children, but now he is "like another child . . . unable to do homework, anything with them." She arranged for Respondent to see a doctor, but while Respondent was working, his schedule did not permit him to attend his appointments. Respondent is supposed to see [REDACTED], but now that he is suspended from duty he still cannot see these doctors. Similarly, there is medicine that he is supposed to be taking, but he does not have access to it due to his suspended duty status.

It was Martine's understanding that Respondent was out on sick leave between June 27, 2009 and July 14, 2010. During that period she drove him to monthly appointments at the Medical Division. After each appointment, she would look at his paperwork to see when his next appointment was scheduled to take place. There was nothing on the paperwork that Respondent showed Martine that indicated he was supposed to return to work. Martine never spoke to anybody at the Medical Division about the matter. After going to the Medical Division, Martine would drive Respondent straight home, where he would just sit "almost like a vegetable." Martine described Respondent before the accident as being "the perfect husband. He used to help [her] with everything. . . . He used to be the one doing the laundry, even cooking. . . . He would always make sure that the kids [did] their homework." Since the accident he has acted totally differently. She even has to remind him now to take a shower. If she does not take out clean clothes for him, he will wear the same clothes for three or four days. Sometimes he does not even remember his address. Martine recently found him at 5:00 a.m. just sitting in his car. She explained that since Respondent lost the car in a parking lot, she no longer allows him to drive unless she is in the car with him.

In June 2011, Penque called Martine to tell her she wanted Respondent admitted to the hospital. Martine was relieved that Penque saw Respondent's need for assistance. While in the hospital, the doctors put Respondent on medication.

At one point Respondent was arrested for his misconduct, but he did not understand what was going on. The Department is now taking approximately \$1,000.00 out of each of Respondent's paychecks, leaving the family with as little as three or four hundred dollars. Martine used to work in daycare, but she has had her license canceled due to Respondent's arrest.

Respondent is unable to remember appointments on his own. He is required to sign in at the Internal Affairs Bureau every day, and Martine goes with him nearly all the time. One time that he went on his own, he got lost and forgot where he parked the car. Martine testified, "Sometimes [Respondent] calls me, and I have to give him the address where he is going, or tell him remember the paper [with the address] that I put in your pocket, in the right or left pocket, so he shows it to [people], and they tell him which way to go." Martine continued, "Whenever he [goes alone], either he is going to be late or something, I have to stay by the phone and keep calling him."

Respondent used to buy flowers or balloons for Martine on her birthday. Since the accident, however, he no longer remembers her birthday. Similarly, he fails to remember his children's birthdays and even his own birthday. While at home, he just sits in a chair with his head facing downward. Sometimes he sits in front of the computer without the computer being turned on. He does not engage Martine or the children in conversation. Before the accident, Respondent was active in his church and even served as the director of the church's communications department. Since the accident, he no longer has a position in the church and sometimes just sits in the car and waits while the rest of the family is inside the church.

Between June 27, 2009 and July 14, 2010, Respondent did not show any indication that he was supposed to be at work. He never indicated that he was faking his behavior so that he could get a paycheck without going to work. At no point since the accident has Respondent acted like he used to act before the accident. His condition seems to be getting worse, as he has become more withdrawn. Martine explained, "We cannot really get two words out of him, and he will take like longer to answer." Respondent has become like a third child for Martine. About Respondent's work

performance before the accident, Martine testified, “[A] captain had chose him to work in the Admin Office because he was in charge of the building, and he works for him for three years. Even after the captain left, the new captain that was there kept him in the position because he was doing a good job.” Furthermore, in 1994, Respondent received a certificate of appreciation for his outstanding service to the community.

During cross-examination, Martine confirmed that since 2011 Respondent has been the sole provider in their household. She is aware that the Department is seeking the termination of Respondent from the Department and that Respondent is, therefore, at risk of losing his pension. There is also a criminal case against Respondent pending in [REDACTED] Court.

Respondent was out on sick leave immediately following the November 2008 car accident. He was returned to work on restricted duty status in February 2009. Between February 2009 and June 26, 2009, Martine or somebody else would drive Respondent to the train station and he would take the train to work. There were occasions during that period that Respondent called out sick and was later returned to duty by the Medical Division. Martine never directly spoke with any Medical Division personnel about the return dates.

It was Martine’s understanding that Respondent was out on sick leave for all 273 days between June 27, 2009 and July 14, 2010. Respondent went to monthly visits at the Medical Division during that period. He was getting paid and received benefits. [Court Exhibit 1 is a Payroll Management System printout indicating that Respondent received \$89, 635. 59 in compensation during that period.] Martine did not speak to anybody at the Medical Division or at Respondent’s command. Besides the Department doctors, Respondent also saw private doctors for his knee and back between the time of the

accident and July 14, 2010. He did not see any mental health professionals during that period, but he did see a neurologist. Martine did not recall the name of the neurologist or how often Respondent saw him.

Respondent was suspended from duty on July 14, 2010. After the suspension, he was assigned to a command in Brooklyn. Either Martine or somebody else would drive him to the train station and he would take the train to work. Respondent has been suspended multiple times since then. He has no medical insurance during the periods of suspension. Prior to June 2011, Respondent was under the care of a [REDACTED] provider named Vanderleer.

#### FINDINGS AND ANALYSIS

Disciplinary Case No. 2010-1833

Specification No. 1

Respondent stands charged herein in that, while assigned to the Housing Bureau, Viper 4, on or about and between June 27, 2009 and July 14, 2010, he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Respondent was absent without leave from the Department, to wit: Respondent failed to report to work, without permission from the Department, for approximately two hundred and seventy three (273) tours, for which he received over fifty thousand dollars (\$50,000) in compensation from the Department.

Evidence adduced at trial established that Respondent was the victim of a collision with an automobile. The exact nature of that event is regrettably not clear in the testimony. Medical records which were entered into evidence on the issue of his [REDACTED] [REDACTED] (RX A) contain within them the initial medical reports. Those reports indicate that

Respondent was standing outside his police vehicle when it was struck by another vehicle causing his vehicle to hit him causing him to fly some distance and land on his knee. Nothing in those reports indicate that Respondent lost consciousness and indeed the report notes that Respondent had no head trauma. The [REDACTED] reports from [REDACTED] [REDACTED] Hospital prepared in 2011 do indicate that Respondent had been knocked unconscious in the initial collision. Given this confusing and inadequate record it is not possible to determine if Respondent was actually knocked unconscious. What does appear to be clear is that Respondent suffered injuries to his back and leg.

At some point Respondent was assigned to the Special Medical District where Dr. Peter Galvin was his police surgeon. Galvin testified that he treats members of the service who have been designated Chronic Sick Category B. He explained that such members, who are also on restricted duty status where they perform clerical tasks in lieu of patrol, have to report to the Special Medical District once a month for evaluation. Galvin testified that he had treated Respondent in March, April and May of 2009 for various ailments. Although he had no independent recollection of returning Respondent to restricted duty, a review of Respondent's records informed him that Respondent had oral surgery on May 26, 2009. Respondent had a medical note and Galvin returned him to duty effective May 30, 2009. Respondent had more dental work on June 16, 2009, but failed to bring medical documentation, so Respondent was returned to duty June 20, 2009. Respondent went sick on June 22, 2009 and was returned to duty June 26, 2009.

According to records, Galvin met with Respondent on various dates between June 9, 2009 and April 19, 2010, and he continued him on restricted duty each time. Galvin testified that he assumed Respondent reported for duty. He also noted that no one from Respondent's command ever contacted him to ask about Respondent's duty status.

Galvin stated that after April 19, 2010 when Respondent was no longer carried Chronic Sick, he no longer treated him.

The evidence also shows that Respondent was transferred to Viper 4 effective April 8, 2009 and never reported for duty there during the period at issue (DX 4). At the beginning of the period charged in this specification Viper 4 listed Respondent as being out on sick leave. At some point in February 2010, the Assistant Integrity Control Officer at Viper 4 changed Respondent's duty status from sick to old line of duty sick. Neither the Integrity Control Officer (ICO) nor Assistant ICO realized that Respondent was out sick this length of time and both received discipline with respect to their actions regarding this incident.

This apparently occurred because notices from the Medical Division about Respondent's duty status were going to his old command, PSA 5.

Respondent reported to the Medical Division on a regular basis and provided medical notes most times when he sought additional medical care. It is unclear, however, whether Respondent was made to understand that at the times when he was not seeking specific medical attention that he was not on continuous sick leave.

There is no testimony that anyone verbally instructed him that he was on restricted duty status and had to report to work. Eight documents entitled "Sick Report" were entered into evidence, (DX 1). All but one precede the period of time in this specification. There is no testimony that Respondent was given a copy of these documents and they appear to have remained in the Medical Division. Even Respondent's wife testified that there was nothing on the paperwork that Respondent showed her that indicated that he was supposed to return to work.

There is no question that there is a check-off box regarding duty status near the bottom of the form. There is also no question that Respondent did sign these forms but there is no clear indication that he was acknowledging the duty status notation.

The form for the critical date at the beginning of the charged period has substantial notes about Respondent having had dental work and bringing in appropriate notes. There is also mention of the fact that he was using crutches.

Whether Respondent could reasonably be expected to have understood that this was notice that he was on restricted duty and expected to report to work at Viper 4, relates at least in some part to his [REDACTED], which was an issue at this trial.

Lieutenant Dominick Valenti, who is the Commanding Officer of the Medical Division's Absence Control and Investigations Unit disputed Respondent's claim of reduced cognitive ability. He testified that generally Respondent would have slow responses to questions and answers which would lead him to believe that Respondent was having difficulty recalling events. But he also testified that on a number of occasions, "I've seen him interacting normally with other members of the Department, particularly when he did not think I was paying attention." He also questioned whether Respondent had any sick leave or complaints about head trauma. He did not know of any neurological examinations being performed on Respondent. Yet, Valenti admitted during cross-examination that he never spoke to any of the doctors who treated Respondent. This leads the Court to believe that Valenti had drawn his own conclusions on Respondent's condition and never sought the consult of medical personnel, including those who treated Respondent outside of the Medical Division, to either refute or support his suppositions.

Evidence adduced at trial established that Respondent attended virtually every monthly appointment at the Medical Division. Valenti testified that he spoke with Respondent almost every time he reported to the Medical Division. Valenti noted that Respondent gave him a blank stare every time he asked him a question. This resulted in Respondent being sent to the [REDACTED] Section. Valenti noted that this visit did not result in any change of duty status for Respondent. So it appeared to Valenti that Respondent was playing, "a bit of a game."

Valenti's assessment of Respondent was not supported by all of the Medical Division personnel. [REDACTED] Anna Penque had to meet with Respondent because every member of the service who is modified or coming off of suspension meets with a Department [REDACTED]. In Respondent's case, he was coming off of suspended duty status. Penque met with Respondent and recommended that he [REDACTED]

[REDACTED] She explained that in her three-year career with the Department, she has assessed at least one hundred members of the service and referred between five and ten members of the service to this type of care. She explained that she made such a referral when she had concern that an officer [REDACTED].

Penque testified that when she spoke to Respondent, he did not make eye contact; he frequently closed his eyes and had a delayed response to questions. He had an interview that lasted between 45 minutes to an hour and he remained the same the entire time. She stated that Respondent told her he was seeing a [REDACTED] who prescribed him medication for his [REDACTED]. Respondent told her he had to stop taking it when he was suspended from duty and no longer had insurance coverage. He told Penque about his line-of-duty injury where he was struck by a vehicle during a car stop and was thrown six to eight feet and was left unconscious briefly.

Respondent told her that he was out sick for a year but was in trouble for the length of time. He also said that he had chronic pain in his back and left knee and took aspirin and Nyquil for it. He informed Penque that he was [REDACTED], had difficulty getting motivated, difficulty sleeping and wished he could "disappear."

Penque stated that it was Respondent's talk of disappearing that concerned her, and when she asked him if he could identify anything worth living for, he could not. This coupled with an independent evaluation of Respondent by [REDACTED]

[REDACTED] Respondent spent ten days in the hospital and was evaluated as having a [REDACTED]" which was "recurrent, severe without psychotic features." He was prescribed [REDACTED] for [REDACTED]. A progress report dated September 29, 2011 by Dr. Dana Devito assessed Respondent as having [REDACTED] and recommended his daily use of prescription medications.

Despite this late 2011 assessment of Respondent, Department [REDACTED] Marisa Barra determined that there was no evidence that Respondent had any cognitive disorder. In a Department memorandum dated June 13, 2012, Barra wrote:

"Ongoing psychological evaluation does not show any evidence of a cognitive disorder which would preclude [Respondent] from performing police work. Medical records were reviewed and the evidence does not support organic based cognitive problems."<sup>1</sup>

There is no question that the Department takes the position that Respondent is malingering; that is that Respondent pretends to be ill or injured in order to avoid

<sup>1</sup> Whether Respondent has "organic based cognitive problems" or not, and in all due respect to Barra, the notion of arming Respondent and putting him out on the street to protect the lives and property of others seems to defy common sense. A review of Respondent's personnel records appear to indicate that Respondent has never been placed on full duty since the accident. Although there are some full-duty notations these seem to correspond with his various suspensions. The remainder of the time he was either sick or restricted.

returning to work. Yet, aside from Valenti's claim there is no evidence that Respondent is faking his behavior. In addition, other members of the Department made observations of Respondent's cognitive ability.<sup>2</sup>

No testimony or other evidence was presented to show that Respondent was talking and functioning in a normal capacity outside of the Medical Division. There is no evidence of, or allegation that, Respondent was engaged in off-duty employment.

The only testimony about any effort at surveillance comes from Sergeant Michael Hengel of the Absence Control and Investigations Unit. He reported that on one instance, on July 12, 2010, he followed Respondent from his residence in [REDACTED], New York to a closed gas station in [REDACTED], New York. He observed Respondent seated in his vehicle. He did not converse with Respondent on that occasion. This observation is inconclusive but it appears to be that no further efforts were made to investigate this matter even when it became apparent that Respondent's mental condition would be a defense at this trial.

During the course of these proceedings, which commenced on May 14, 2012 and concluded December 21, 2012, this Court had multiple opportunities to make observations of Respondent. There were dates when this matter proceeded to trial, and other dates when conferences were held in between trial dates. This Court had well over ten occasions to make observations of Respondent during the seven-month period. Observations before the proceedings commenced, observations upon return from lunch breaks, and during the course of testimony of various witnesses. The observations remained constant. Respondent sat at the Respondent's table with his head down. He

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<sup>2</sup> Davis-Odum noted that Respondent seemed confused and not understanding what she was saying when she asked him for a Return From Sick Report not a Sick Report form. Fluker described Respondent as "a little slow."

had to be told when to stand and when to sit. If he moved from the table, he walked in a slow fashion in and out of the courtroom. Respondent's head was down even as witnesses for the Department and the Respondent testified. He appeared to pay no attention whatsoever to the proceedings and had no reaction to any of it. He took no notes. At no point in the seven days of trial testimony did Respondent confer with his legal counsel of his own volition. Put simply, Respondent did not appear to participate to any extent in his own defense.

On July 18, 2012 when this matter was scheduled to commence at 10:00 a.m. for continued trial, Respondent's whereabouts were unknown. His attorney spoke to him and he advised his attorney at 10:00 a.m. that he would arrive in 40 minutes. He advised his attorney that he was on foot in the vicinity of 125 Street in Harlem. At about 11:00 a.m., he had not arrived at court and had not communicated with anyone. On or about 11:34 a.m., a decision was made to take a recess in the matter and second call it in an hour to see what could be ascertained regarding Respondent's whereabouts. His cell phone number was communicated with court staff in an effort to reach him. Upon information and belief, Respondent's train had been rerouted, causing him to not be aware of how to get to One Police Plaza. Eventually he reported to the trial room and the matter commenced at 12:45 p.m.

Respondent's attorney reiterated what he had stated at the commencement of these proceedings:

Well, Judge, I spoke with him at ten o'clock. He told me he would be here in 40 minutes. I then spoke to him at eleven o'clock or maybe five after eleven, and he indicated to me I thought he was on foot around 125<sup>th</sup> Street, and I think his plan was to take the subway to come down here, but as you can tell by these charges, his cognitive reasoning is sometimes impaired in terms of his ability to be places

when he's supposed to be there. I don't know that he has the sort of control over doing that that obviously we all do who are presently in the courtroom today.

While this Court does not claim to be medically trained in evaluating Respondent's condition, the Court is in a position to make observations based on the length of time it took for this proceeding to commence and end and to notice the lack of response to the proceedings by Respondent, proceedings which could end his career as a police officer if he were to be found Guilty of the 16 Charges and Specifications pending against him. If Respondent's conduct, or lack thereof, throughout these proceedings is a ruse, it is a very elaborate and consistent one.

Considering the totality of the circumstance I make the following observations: Respondent does seem to have some cognition problem. Whether this condition is organic or not, this Court cannot determine, but something is amiss. There is no evidence that Respondent was ever told specifically and directly that he had to report to work at Viper 4 on June 26/27, 2009. He regularly visited the Medical Division but was never informed that he had failed to report for duty. He apparently was never contacted by his command to see why he had not come to work because they believed he was on sick leave. All of this reinforced his belief that he was on extended and approved sick leave.

Accordingly, I recommend that Respondent be found Not Guilty of this Specification.

Specification No. 2

Respondent stands charged herein in that, while assigned to the Housing Bureau, on or about August 13, 2010, he failed to bring his Activity Logs that cover the years

2009 and 2010 to his official Department interview as directed when Respondent received the notification to appear for the official Department interview.

Evidence adduced at trial established through the testimony of Captain Larry Chambers was that Respondent was the subject of an official Department interview in August 2010. Chambers testified that Respondent was notified prior to the interview to provide his Activity Logs for investigators at the interview.

In assessing this charges and evaluating Respondent's mental state it should be noted that this Court has found that when Respondent was given specific, clear and uncomplicated directions he was capable of carrying them out. As already noted this was absent in Specification No. 1.

With regard to this specification Chambers gave specific, clear and uncomplicated direction with which Respondent failed to comply.

Accordingly, Respondent is found Guilty of Specification No.2.

Specification No. 3

Respondent stands charged herein in that, while assigned to the Housing Bureau, Viper 4, on or about July 7, 2010, while at the Department's Bronx Health Care Unit, he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Respondent wrongfully impeded a Department investigation, to wit: when asked by Sergeant Kenneth Smith, Commanding Officer of the Bronx Health Care Unit, whether he reported to work in June, July, August, September, October, November and December of 2009, Respondent indicated that he did.

Chambers testified that while assigned to the Housing Bureau Investigations Unit, he conducted an official Department interview of Smith. Smith advised him that when he

spoke with Respondent he asked him if he worked in the months of July, August, September, October, November, and December of 2009, Respondent replied that he had (DX 13 and 13A).

Based on my observations and conclusions about Respondent's cognitive abilities he should have been able to answer this question.

Accordingly, Respondent is found Guilty of Specification No. 3.

Specification No. 4

Respondent stands charged herein in that, while assigned to the Housing Bureau, Viper 4, on or about August 13, 2010, he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Respondent wrongfully impeded a Department investigation, to wit: Respondent stated during his official Department interview, in sum and substance, that he could not recall his discussion regarding his duty status with Smith and Dr. Michael Murray on July 7, 2010.

Chambers testified that during his official Department interview on July 29, 2010, Smith stated that on July 7, 2010 Murray brought to his attention that there was confusion over Respondent's duty status. Subsequent computer checks showed that Respondent was on restricted duty. When Smith asked Respondent whether he was aware that he was on restricted duty, he stated that he was aware.

It is unnecessary to determine if Respondent intentionally misstated the facts or if, given his mental situation, was genuinely unable to recall the conversation. The reason for this is that there is evidence in the record to establish that Respondent made the statement attributed to him in this specification. There was reference to the fact that Respondent was the subject of an official Department interview in August 2010, but the

substance of that interview, particularly as it pertains to this specification was never elicited. Even when Chambers was recalled as a witness, the substance of Respondent's official Department interview as it pertains to this specification was not addressed. A transcript and audio of the interview, if they exist, were not placed in evidence.

Accordingly this specification is Dismissed.

Disciplinary Case No. 2010-3371

Specification No. 1

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about December 15, 2010, after having been returned to duty by a Department Surgeon he failed to report back to work for his first platoon tour on December 15, 2010, as ordered.

Evidence adduced at trial established through the testimony of Sergeant Jimmie Fluker was that Respondent was scheduled to work the Expedited Arrest Processing post at the Brooklyn Court Section during the first platoon on December 16, 2010 and Respondent did not appear for duty. Fluker testified that he called Respondent who informed him that he was on sick leave and would return after his regular days off. Fluker advised him that he had already been restored to duty and was expected to be at work by the second platoon. Respondent reported for duty for the second platoon. Fluker memorialized this conversation in the Command Log (DX 12).

Based on the roll call (DX 11) corroborating the same and the Command Log entry (DX 12), Respondent is found Guilty of Specification No. 1 as charged.

Specification No. 2

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about December 14, 2010, he failed to immediately notify a Brooklyn Court Section supervisor of his being returned to duty by a Department Surgeon, as required.

Evidence adduced at trial established through the testimony of Hengel was that Respondent was on sick leave on December 14, 2010. Because Respondent was designated Chronic Sick-Category B, he was provided with a copy of a form regarding his responsibilities while out sick and Chronic B. Respondent signed the form and was given a copy for his own records according to testimony. In addition, Hengel said that he verbally instructed Respondent on the regulations for members designated Chronic B and he explained everything to him twice and Respondent acknowledged that he understood. (See DX 10 which is a copy of the memorandum on Chronic Sick Designation B, signed by Respondent on December 14, 2010).

Police Officer Kevin Geoghan testified that same day December 14, 2010 Respondent met with a doctor at the Special Medical District and was told that he was to report for duty the next morning. Geoghan also called Respondent and notified them that Respondent was scheduled to report for duty the next day.

This seems to be the sum of evidence that was presented with regard to this specification. There is no evidence that Respondent failed to call his command or that he was told to call the command. Consequently the assertion that Respondent "failed to immediately notify a Brooklyn Court Section supervisor of his being returned to duty by a Department Surgeon, as required," has not been established in any way. Consequently it is recommended that this specification be Dismissed.

Specification No. 3

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about December 16, 2010, he failed to comply with the lawful order of a supervising officer, to wit he failed to report to the Brooklyn Court Section at 1000 hours as directed Fluker.

Evidence adduced at trial through the testimony of Fluker was that he spoke to Respondent on December 16, 2010 and advised him that since he did not show up for his scheduled tour for the first platoon, as per the lieutenant, he was expected to report for duty for the second platoon at 10:00 a.m. Fluker memorialized this conversation in the Brooklyn Court Section Command Log at 7:45 a.m. on December 16, 2010 (see DX 12). A review of the Command Log reflects that Respondent did not show up for duty until 12:20 p.m. on that date.

Accordingly, Respondent is found Guilty of Specification No. 3.

Disciplinary Case No. 2011-4350Specification No. 1

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about March 23, 2011, he failed to notify the Desk Officer/Supervisor at his assigned Command at least two hours prior to the start of his tour that he was reporting sick, to wit: Respondent reported sick at approximately 0836 hours for his scheduled 0837 x 1700 hours tour.

Evidence adduced at trial through the testimony of Valenti was that Respondent called in one minute before his scheduled 8:37 a.m. tour and reported old-line-of-duty sick. Valenti testified that Respondent told him over the telephone that he had been

trying to call the Sick Desk for several hours but was unable to get through. Valenti also testified that his tour began at 6:00 a.m. and he was at the Sick Desk between 7:00 a.m. and 7:15 a.m. He explained that three police officers were answering telephones at the Sick Desk that morning. He further explained that the Sick Desk has an automated system which allows the supervisor to see who is on the telephone, how long the call lasts, whether calls are incoming or outgoing and whether there are any calls waiting.

Valenti testified that there were 40 phone calls during the two-hour period that Respondent was supposed to call in to report sick and there were no dropped calls. He further testified that during the 15-minute period that he was at the Sick Desk, telephones were not busy and there were no calls waiting. In addition, Valenti pointed out that Respondent had the direct phone numbers to his office and the Special Medical District and could have easily called either of those phone lines.

Given the fact that Valenti testified that Respondent's account of being unable to reach the Sick Desk during the two-hour period before the start of his tour was unlikely, Respondent is found Guilty of Specification No. 1.

#### Specification No. 2

Respondent stands charged herein in that on or about March 24, 2011, while assigned to the Brooklyn Court Section, having been examined by a Department District Surgeon on March 23, 2011 and found fit for duty on said date, he reported sick again for the same reason on March 24, 2011, at approximately 0619 hours.

It was established through hearsay testimony provided by Valenti that Respondent reported to the Medical Division on March 23, 2011 and met with Department Surgeon Lea Dann. Respondent complained of knee pain. Although Dann noted slight swelling,

to Respondent's left knee, she returned him to duty as of 5:00 p.m. on that same day, March 23, 2011. On March 24, 2011 at 6:30 a.m., Respondent reported sick for the same knee injury. On that same date, Respondent was seen by Galvin who noted no swelling or other significant reason why Respondent could not return to work. Respondent was returned to duty as of 11:00 a.m. that same day.

Valenti testified that Patrol Guide Procedure 205-45 states in pertinent part that members of the service who are designated Chronic Sick Category B and are found fit for duty by the Special Medical District may be suspended from duty if they report sick again for the same reason prior to their next scheduled tour of duty and no injury or illness is found. Valenti stated that both Hengel and Sergeant James Galimi of the Absence Control and Investigations Unit informed Respondent of the same and as a result, Respondent was suspended from duty on March 24, 2011.

Based on the above evidence, Respondent is found Guilty of Specification No. 2.

Disciplinary Case No. 2011-6362

Specification No. 1

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about November 20, 2011, he failed to notify the Desk Officer/Supervisor at his assigned Command at least two (2) hours prior to the start of his tour that he was reporting sick, to wit: Respondent reported sick at approximately 0756 hours for his scheduled 0837 x 1700 hours tour.

Evidence adduced at trial established that Respondent reported sick around 7:50 a.m., when his tour was scheduled to begin at 8:37 a.m. Valenti testified that this was in

violation of the rule that states that members of the service should report sick at least two hours prior to the start of their scheduled tour. (See Interim Order No. 27, dated 2010).

Based on Valenti's account, Respondent is found Guilty as charged.

Specification No. 2

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about November 21, 2011, having been examined by a Department Surgeon and found fit for duty at 0900 hours on said date he reported sick again for the same reason at 1244 hours at the Brooklyn Court Section.

It was established through the hearsay testimony provided by Valenti that Respondent went sick on November 20, 2011 at 7:50 a.m. Because it was the weekend, Respondent reported to the Weekend Surgeon, Dr. Stephen Hornyak. Hornyak evaluated Respondent and kept him out sick with direction to visit Galvin the following day. Galvin returned Respondent to work as of 9:00 a.m. Monday, November 21, 2011. At 9:14 a.m., Valenti testified that he signed Respondent out at the Medical Division and directed him to report to his command. Two hours later, a sergeant from Respondent's command notified Valenti that Respondent had still not appeared. Respondent did not appear until after 12:00 p.m., at which time he went sick again. The next day, Galvin evaluated Respondent for the same old-line-of-duty injury and returned him to work as of 10:00 a.m. Respondent was suspended a second time for violating Patrol Guide Procedure 205-45.

Given the fact that Respondent was returned to duty on November 21, 2011 and he went sick that same day for the same old-line-of-duty injury and was returned to duty once seen by a Department surgeon, Respondent is found Guilty of Specification No. 2.

Specification No. 3

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about November 21, 2011, he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer could not account for his whereabouts from 0914 hours from Medical Division until his return to the Brooklyn Court Section at 1200 hours.

There was no testimony elicited at trial which addressed this specification. It was adduced that from 9:14 a.m. when Respondent was released from the Medical Division that he was supposed to report to the Brooklyn Court Section; and that he failed to arrive until 12:00 p.m.; but there was no testimony elicited from either Respondent or a person who interviewed Respondent with respect to this alleged delay in arrival. No one addressed why Respondent was delayed or to state that Respondent had no account for his whereabouts during this period or even whether Respondent had an explanation regarding his delay.

Accordingly, as there is no evidence to establish that Respondent "could not account" for his whereabouts" this specification is Dismissed.

Disciplinary Case No. 2012-7741Specification No. 1

Respondent stands charged herein in that while assigned to the Brooklyn Court Section, on or about and between May 29, 2012 and June 13, 2012, at a location known to this Department, having been directed to appear at the Medical Division, he failed to timely appear for said assignment on three (3) separate dates wherein said officer was late for a total of approximately seven (7) hours and (1) one minute.

Evidence adduced at trial through the hearsay testimony of Valenti was that Respondent reported old-line-of-duty sick at approximately 2:57 a.m. on May 27, 2012. A Department surgeon met Respondent later that day and left him on Sick Report. Valenti had a Sergeant Arianna call Respondent and instruct him to report to the Medical Division at 9:00 a.m. on May 29. On May 29, 2012, Respondent did not appear at the Medical Division until 1:02 p.m. The operating hours of the Special Medical District were from 9:00 a.m. to 11:30 a.m., so there were no doctors available to assess Respondent's duty status at that time. Respondent was, therefore, late for his appointment by four hours and two minutes. Respondent had to be ordered back to the Medical Division at 9:00 a.m. the next day. Galvin met with Respondent and returned him to duty at approximately 9:30 a.m.

On June 5, 2012, Respondent reported old-line-of-duty sick. He arrived at the Medical Division at 11:17 a.m. although his report time was 9:00 a.m. He was late by two hours and 17 minutes. Respondent told Valenti that an unknown person at the Sick Desk had instructed him to report at 10:00 a.m. On June 11, 2012, Valenti testified that he notified Respondent to report at 11:00 a.m. on June 13, 2012 for an official Department interview. Respondent did not appear for the interview until 11:42 a.m., some 42 minutes late.

Given the fact that Respondent reported late on three occasions: four hours and two minutes late on May 29, 2012; two hours and 17 minutes late on June 5, 2012; and 42 minutes late on June 13, 2012; Respondent is found Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of failing to bring his Activity Logs to his official Department interview as directed when he received the notification to appear; impeding an investigation by stating that he worked June through December 2009 when in fact, he did not; after being returned to work, failed to report for duty for the first platoon on December 15, 2010 as ordered; failure to comply with a lawful order to report to the Brooklyn Court Section at 10:00 a.m. as directed by Sergeant Fluker; failure to notify the Desk Officer/Supervisor at his assigned command at least two hours prior to the start of his tour on two occasions that he was reporting sick; having been examined by a Department surgeon on March 23, 2011 and found fit for duty, that Respondent reported sick for the same reason on March 24, 2011; having been examined by a Department surgeon on November 21, 2011 and found fit for duty, that Respondent reported sick for the same reason on the same date; March 24, 2011; having been directed to appear at the Medical Division, failed to timely appear on three separate dates for a total of seven hours and one minute.

The Assistant Department Advocate asked for a penalty of termination, but that penalty recommendation included the most serious specification, in Disciplinary Case No. 2010-1833, which involved Respondent being absent from work for 273 tours, which this Court found Respondent Not Guilty of.

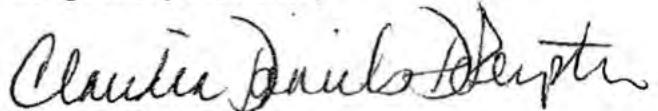
When reviewing the Charges and Specifications Respondent was found Guilty of, a picture emerges of an individual who despite having some type of diminished cognitive ability, still presumably has the ability to comply with directives. Respondent failed to provide his Activity Logs at an official Department interview that he appeared at, despite being directed to do so in his notice to appear. Respondent impeded an investigation by stating that he appeared for work for a seven-month period, to wit June to December 2009, despite his testimony that he was out sick during this period. Respondent failed to report to the first platoon on December 15, 2010 as ordered. He failed to comply with a direct order from Sergeant Fluker to report to the Brooklyn Court Section at 10:00 a.m., although he reported two hours later. He failed to report to his command two hours before the commencement of his tour that he would be reporting sick, although he called in five minutes before the start of his tour to report sick. Respondent reported sick on two occasions following examinations on both occasions by Department surgeons who found him fit for duty.

A review of Respondent's personnel record indicates that Respondent was suspended 161 days without pay. His current duty status is that he is suspended with pay. The Court finds that in each of the pre-trial suspension cases, Respondent engaged in misconduct which this Court finds him Guilty of. Thus it is recommended that Respondent forfeit each of the pre-trial suspension days in the amount of thirty days in each case. However, where the suspension days exceeded 30 days, those days will be returned to Respondent. It is further recommended that Respondent be placed on dismissal probation for one year.

That is, in Disciplinary Case No. 2010-1833, Respondent was suspended for 32 days. The Court believes 30 suspension days is an appropriate penalty to resolve the specifications in that matter. It is recommended that Respondent be credited for the two additional suspension days. In Disciplinary Case No. 2010-3371, Respondent was suspended for 34 days. The Court believes 30 suspension days is an appropriate penalty to resolve the Specifications in that matter. It is recommended that Respondent be credited for the four additional suspension days. In Disciplinary Case No. 2011-4350, Respondent was suspended for 33 days. The Court believes 30 suspension days is an appropriate penalty to resolve the Specifications in that matter. It is recommended that Respondent be credited for the three additional suspension days. In Disciplinary Case No. 2011-6362, Respondent was suspended for 31 days. The Court believes 30 suspension days is an appropriate penalty to resolve the Specifications in that matter. It is recommended that Respondent be credited for the one additional suspension day. The Court notes that Respondent was suspended an additional 31 days at the time he was arrested for a [REDACTED]. No additional charges were filed at the time of that arrest. The Court also notes that Respondent was found Guilty in Disciplinary Case No. 2012-7741 in which Respondent was late to work on three occasions totaling over seven hours. Respondent was not suspended in that matter. It is recommended that Respondent be suspended for 30 days in that matter, to be served in the following manner: he is to forfeit the 30 pretrial suspension days served in the arrest case. It is recommended that Respondent be credited for the one additional suspension day in that arrest case.

Accordingly, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. In addition, I further recommend that Respondent forfeit 150 days previously served on pre-trial suspension. It is also recommended that Respondent be restored or credited with 11 days previously served on pretrial suspension.

Respectfully submitted,



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER EUVINDSONZ DACILAS  
TAX REGISTRY NO. 914334  
DISCIPLINARY CASE NO. 2010-1833, 2010-3371,  
2011-4350, 2011-6362 & 2012-7741

In 2009 and 2011, Respondent received an overall rating of 3.0 “Competent” on his annual performance evaluations. He was rated 2.5 “Competent/Low” in 2010. He has been awarded two medals for Excellent Police Duty. Since 1995, [REDACTED]

[REDACTED]  
[REDACTED] He has been on Suspended With Pay status since August 2012.

Respondent has been the subject of one prior adjudication. In 1998, he was charged with conducting an unlawful frisk. He was found Not Guilty at trial.

For your consideration.



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials